THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.15695 of 2007

23.7.2007

Between:

Fishermen Cooperative Society, represented by its President, Bashaboyina Bhaskar Rao

… Petitioner

AND

The Government of Andhra Pradesh, represented by its Principal Secretary
Animal Husbandry, Dairy Development and Fisheries (F.II) Department,
Secretariat, Hyderabad And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

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ORDER:

Fishermen Cooperative Society, Yerravaram village of Kodad Mandal in Nalgonda District, filed the instant writ petition challenging the notice/communication dated 19.7.2007 issued by the fourth respondent requesting the petitioner to deposit half of the upset price as fixed by the third respondent and for leasing out the fishing rights in Uracheruvu of the Gram Panchayat.

It is the case of the petitioner that it is a registered society entitled to preferential right in allotment of panchayat tank for fishing. It has, as alleged, 171 members and was registered in 1981. During 2006-2007 third respondent accepted the proposal submitted by the fourth respondent and fixed upset price at Rs.30,000/- and now without consulting Mandal Development Officer or Fisheries Development Officer, fourth respondent sent a proposal to fix the upset price at Rs.1,30,000/-, which is accepted by the third respondent. According to the petitioner, the same is contrary to the orders of the Government in G.O.Rt.No.340, dated 04.9.2003, whereby and whereunder the existing lessee is entitled to extension of lease for a further period of two years by enhancing rentals by 10%.

Learned Counsel for the petitioner vehemently contends that the increase of the upset price from Rs.30,000/- to Rs.1,30,000/- is abnormal and there is no basis for the same. According to the learned Counsel, Uracheruvu is a small tank and even if 171 members of the petitioner society toil, they will not be able to get harvest as estimated by respondents 3 and 4. He strongly relies on G.O.Rt.No.340, dated 04.9.2003, to press the argument that the petitioner is entitled to automatic renewal of lease for two years.

Per contra, learned Counsel for fourth respondent (caveator) submits that Uracheruvu/tank of Yerravaram Gram Panchayat has water spread area of Acs.80.00, that taking into consideration the proposal submitted by the gram Panchayat, the competent authority – third respondent; fixed the upset price at Rs.1,30,000/-. If the petitioner society is not willing to accept the lease, the Gram Panchayat has to put the auction, as per the Rules laid down by the Government in G.O.Ms.No.343, Panchayat Raj, dated 10.4.1978. Learned Assistant Government Pleader for Panchayat Raj also supports this argument.

Whether the petitioner society is entitled for renewal of lease for another period of two years? G.O.Rt.No.340, dated 04.9.2003, which is relied on by the learned Counsel for the petitioner does not in any manner suggest that the same is applicable to panchayat tanks. Bare perusal of the same would show that the Government agreed to extend the lease period of tanks vested with the Fisheries Department for a further period of two years i.e., 1413 and 1414 Faslis, but the same has no application in respect of the tanks vested in the Gram Panchayat. There is no doubt that the Gram Panchayat cannot exercise any control over the fishing tanks vested in the Fisheries Department.

In exercise of their powers under Sections 65(1)(b), 85(2) and 217(1) of Andhra Pradesh Gram Panchayat Act, 1964 (the Act, for brevity), the Government made the Rules relating to leasing of fishery rights in minor irrigation tanks, and other courses vested in the Gram Panchayats (the Rules, for brevity). Rule 2 of the Rules reads as under.

> **Rule 2:** (a) Before the fishery rights in the tank of other sources are leased out auctioned by the gram panchayat, the executive authority of the gram panchayat, shall make an application to the Divisional Panchayat Officer concerned furnishing therewith the particulars of revenue on such lease of minor irrigation tanks and tank, or other sources during the past five years together with the dost and quality of and other relevant factors to fix an upset price.
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> (b) The DPO shall within five days from the date of receipt of application referred to in clause (a) above, fix an upset price duly considering the revenue of the previous years. Market value and other factors and communicate the same to the executive authority and to the Extension Officer (Panchayats) concerned.
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> Provided that the Collector (Panchayats) shall have power to revise the upset price fixed by the DPO under this clause.

The above Rule is very plain. It is only the Gram Panchayat who has to submit the proposal to Divisional Panchayat Officer (DPO) for fixing upset price taking into consideration particulars of revenue in the past. After receiving such proposal, the DPO shall fix upset price duly

considering the revenue of the previous years. As per the proviso, if a person is aggrieved, he can seek a revision before the District Collector (Panchayats). Therefore, the submission that third respondent fixed upset price accepting the proposal of the DPO, without consulting MDO of Fisheries Development Officer, is baseless. The Rule position does not permit any such argument. Secondly, bare perusal of Rule 3 of the Rules would show that after getting upset price, the Gram Panchayat has to offer the lease to the Fisheries Cooperative Society requesting them to give their acceptance before fifteen days from the date of receipt of the intimation whether the said cooperative society could take out the lease at the rate fixed by the DPO. If the cooperative society fails to accept the lease, then the Gram Panchayat has to auction the fishing rights. By impugned notice, petitioner society was asked to inform their acceptance for upset price of Rs.1,30,000/- and also pay half of the upset price. There is no illegality in issuing such notice. Insofar as method of fixing upset price at Rs.1,30,000/- is concerned, no material is placed before this Court to appreciate the contention that such upset price is arbitrary. If the petitioner is aggrieved, its remedy is to seek a revision before the District Collector (Panchayats.

The writ petition is misconceived and is accordingly dismissed. No costs.

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(**V.V.S.RAO,J**)

July 23, 2007.
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